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14
15 UNITED STATES DISTRICT COURT
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17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18
19 OAKLAND DIVISION

20 EPIC GAMES, INC.,
21 Plaintiff, Counter-defendant

Case No. 4:20-cv-05640-YGR
Case No. 4:11-cv-06714-YGR
Case No. 4:19-cv-03074-YGR

22 v.
23 APPLE INC.,
24 Defendant, Counterclaimant

**DEFENDANT APPLE INC.'S
ADMINISTRATIVE MOTION TO SEAL
PORTION OF TRANSCRIPT**

25 IN RE APPLE IPHONE ANTITRUST
26 LITIGATION

27 DONALD R. CAMERON, *et al.*,
28 Plaintiffs

Hon. Yvonne Gonzalez Rogers
Hon. Thomas S. Hixson

v.
APPLE INC.,
Defendant.

1 Pursuant to Federal Rule of Civil Procedure 26(c), Defendant Apple Inc. (“Apple”) moves the
 2 Court to seal lines 19 through 21 on page 79 of the transcript of the hearing held before the Court on
 3 December 15, 2020, as well as portions of the declaration and exhibits in support of this motion. Apple
 4 respectfully submits that redaction is appropriate to protect Apple’s confidential trade secrets and to
 5 partially remedy a violation of the Protective Order entered by the Court in these related cases.
 6 Redacted versions of the transcript and the supporting declaration are submitted herewith, and
 7 unredacted versions of the transcript and the supporting declaration with the proposed redactions
 8 highlighted, as well as unredacted versions of the supporting exhibits, are being filed under seal
 9 concurrently with this motion.

10 In sum:

11 (1) In September 2020, Apple produced certain transactional data to Plaintiffs, including
 12 the Developer Plaintiffs, related to, among other things, the commissions charged by Apple for
 13 subscriptions and purchases made through the App Store.

14 (2) That transactional data was designated as HIGHLY CONFIDENTIAL –
 15 ATTORNEYS’ EYES ONLY, pursuant to the Protective Order entered by the Court. *See* Dkt. 19-cv-
 16 03074-YGR, Dkt. No. 85.

17 (3) At a public hearing before the Court on December 15, 2020, Benjamin Siegel, counsel
 18 for the Developer Plaintiffs, citing the confidential transactional data, disclosed certain confidential
 19 business information relating to Apple’s business relationships with other companies. *See* 12/15/2020
 20 Hr’g Tr. at 79:19–21.

21 (4) On December 20, 2020, counsel for Apple sent a letter to Mr. Siegel inquiring as to the
 22 basis for his statement in Court and requesting a response by noon on December 21. *See* Dettmer Decl.
 23 Ex. A.

24 (5) On December 23, 2020, Mr. Siegel responded, but did not provide the basis for his
 25 statement in Court, instead inaccurately claiming that the information was separately available through
 26 public media outlets. *See* Dettmer Decl. Ex. B. Apple responded to Mr. Siegel’s letter today. *See*
 27 Dettmer Decl. Ex. C.

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A party seeking to seal materials filed in connection with a non-dispositive motion must make a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). Sealing is appropriate when the information at issue constitutes “trade secret information.” *Monster, Inc. v. Dolby Labs. Licensing Corp.*, No. 12-CV-2488, 2013 WL 163774, at *1 (N.D. Cal. Jan. 15, 2013); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or commercial information”); *France Telecom S.A.*, No. 12-CV-4967, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014) (“The non-public sales information at issue is among the types of competitively sensitive information that qualifies as a trade secret and is properly sealed at trial.”).

The information disclosed by Mr. Siegel at the December 15 hearing constitutes confidential trade secrets. *See* Dettmer Decl. ¶¶ 7–9. It relates to specific details regarding Apple’s business relationships. Redaction of that information from the transcript will not in any way inhibit the public’s ability to understand the proceedings, as the information was offered by Mr. Siegel only as an example of the type of information contained in the transactional data.

To the extent the Developer Plaintiffs argue that sealing is inappropriate because the same information is available through public media sources, that is inaccurate. The sources cited by Mr. Siegel do not support his statement made in Court. *See* Dettmer Decl. Ex. C.

Apple therefore requests that the Court seal the following documents as described below:

Document	Redacted Material
Transcript of Hearing on December 15, 2020	Page 79, lines 19 through 21
Declaration of Ethan Dettmer In Support of Apple’s Administrative Motion to Seal	Page 3, lines 2 through 3 Page 3, lines 9 through 11
Exhibits A–C to the Declaration of Ethan Dettmer In Support of Apple’s Administrative Motion to Seal	Sealed in their entirety

1
2 Dated: December 24, 2020

Respectfully submitted,

3 GIBSON, DUNN & CRUTCHER LLP

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5 By: /s/ Veronica S. Lewis
Veronica S. Lewis

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7 Attorneys for Defendant Apple Inc.

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